No. 89-~~860~~ ____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

Supreme Court, U.S.
FILED
NOV 27 1989
JOSEPH F. SPANIOL, JR.
CLERK

EARL R. BREES,

Petitioner,

v.

ROBERT E. HAMPTON, INDIVIDUALLY AND AS CHAIRMAN OF THE UNITED STATES CIVIL SERVICE COMMISSION, et al.,

Respondents.

APPENDIX - VOLUME 2 of 3
TO
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

TRACY E. MULLIGAN, Esquire
Suite 215
416 Hungerford Drive
Rockville, Maryland 20850
(301) 340-9670

Attorney of Record for
Petitioner

Of Counsel:

GLENN H. CARLSON, Esquire
Carlson, Cafferty & Ferris, P.C.
Suite 411
1910 K Street, N.W.
Washington, D.C. 20006
(202) 452-0004

November 27, 1989

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Earl R. Brees,
10103 Towhee Avenue
Adelphi, MD 20783,

Plaintiff,

v. C.A. #75-0178

ROBERT E. HAMPTON,
individually and
as Chairman of the
United States Civil
Service Commission,
Room 5H09,
1900 E Street, NW
Washington, D.C.
20415,

and Complaint

FREDERICK B. DENT,
individually and as
Secretary of
Commerce,
Room 5854,
14th Street Between
Constitution Avenue
and E. Street, N.W.
Washington, D.C.
20230,

and

BERT A. GALLEGOS, *
individually and as *
Director of the *
Community Services *
Administration *
(formerly the *
Office of Economic *
Opportunity), *
Room 548, *
1200 - 19th St, NW, *
Washington, D.C. *
20506, *
*
Defendants. *

COMPLAINT

Plaintiff, Earl R. Brees, by his attorney, Tracy E. Mulligan, complaining of the defendants, alleges:

1. Jurisdiction. This action arises under Section 717(c) of the Civil Rights Act of 1964, as amended on March 24, 1972, and under the Fourteenth Amendment to the Constitution of the United States.

2. Parties.

a. The Plaintiff is a United States citizen; an honorably discharged disabled

and combat veteran with more than eleven years and nine months of active military service in the Armed Forces of the United States; a former Civil Service employee at the time these actions were taken against him with more than eight years and four months of Civil Service employment who was entitled to reinstatement rights as a disabled veteran with "CAREER" status attained effective in June 1970; and is entitled to Veterans' Preference for employment in the Civil Service of the United States.

b. The Defendants are:

(1) Robert E. Hampton, individually and as Chairman of the United States Civil Service Commission;

(2) Frederick B. Dent, individually and as Secretary of Commerce;

(3) Bert A. Gallegos, individually and as Director of the Community Service

Administration (formerly the Office of Economic Opportunity).

All of the Defendants are officials in agencies of the Executive Branch of the United States Government and are subject to the laws of the United States and to the provisions of the Code of Federal Regulations (CFR).

3. Section 717(c) of the Civil Rights Act, as amended, 84 Stat. 112, authorizes an employee or an applicant to file a civil action in an appropriate United States District Court after one hundred eighty (180) calendar days from the date of filing a complaint with his agency if there has been no decision.

a. The Plaintiff filed complaints of racial discrimination, complaints of reprisals, and complaints of violation of the Plaintiff's Veterans' Preference rights against the Department of Commerce

on February 25, 1974.

b. No final decision has been received from the Department of Commerce concerning the Plaintiff's complaints of February 25, 1974, as of February 3, 1975 -- a period of more than 330 calendar days since the complaints were filed.

c. On March 30, 1974, the Plaintiff filed complaints of reprisals taken by the Department of Commerce against the Plaintiff because the Plaintiff filed complaints of racial discrimination against the Department of Commerce.

d. No final decision has been received from the Department of Commerce concerning the Plaintiff's complaints of March 30, 1974, as of February 3, 1975 -- a period of more than 300 calendar days since the complaints were filed.

e. Under the provisions of 5 CFR 713.213, the Plaintiff filed a request for

"precomplaint processing" for complaints of racial discrimination and complaints of reprisals against the Office of Economic Opportunity (now Community Services Administration) on January 5, 1974, and January 11, 1974. This was a prerequisite to filing a formal complaint of racial discrimination under 5 CFR PART 713.

f. No action has been taken by the Office of Economic Opportunity (now Community Services Administration) although more than 380 calendar days have elapsed since the filing of this request.

4. The Department of Commerce did not provide equal opportunity for employment to the Plaintiff and did not promote the full realization of equal employment opportunity by applying standards for the Plaintiff a Caucasian misdemeanant, other than those used to judge the suitability of convicted Negro felons and misdemeanants.

a. The Plaintiff was selected in October 1973 as the best-qualified applicant for a position as a Consultant; as a Computer Specialist, GS-0334-14; or as a Computer Specialist, GS-0334-13, Sept. 6, $24,122 per annum, in the Department of Commerce. Employment was denied.

b. The Plaintiff was described by an Assistant Employment Officer, GS-13, in the Department of Commerce as "probably the most qualified of any applicants for the jobs" (secretary, etc., GS-05 through GS-07). Employment was denied.

c. The Department of Commerce denied the Plaintiff employment although the Plaintiff was not debarred at that time and has never been debarred from the Federal Service; was entitled to Veterans' Preference; was entitled to "reinstatement" as a disabled veteran and as a former Government employee with "CAREER" status;

had current eligibility on a Civil Service Register (Announcement 408); and, in the hiring process, had been duly selected for employment within the Department of Commerce.

d. The Plaintiff's record of rehabilitation since his conviction of a misdemeanor in the District of Columbia Court of General Sessions in 1967, measured against the criteria indicating rehabilitation established in Chapter 306 of the Federal Personnel Manual which implements the Employment of the Rehabilitated Offender in the Federal Service Program, has been characterized by EEO Counselor Wilmer S. Hunt in his June 11, 1971, report to the Office of Economic Opportunity as "evidence of rehabilitation which, in anybody's book, is impressive".

e. The Plaintiff was an employee of the Office of Economic Opportunity from

August 1967 until September 1972; his work at the Office of Economic Opportunity has been characterized by his immediate supervisor as outstanding. All grade promotions were denied him from 1968 to 1972.

f. Subsequent to his misdemeanor conviction in 1967, the Plaintiff earned the degree of Master of Arts in Public Administration: Technology of Management (Computer Systems and Management Information Systems) during the period September 1967 through August 1970 at The American University.

g. Subsequent to his misdemeanor conviction in 1967, the Plaintiff has completed doctoral work, he is currently a Doctoral Fellow, and he expects to receive the degree of Doctor of Philosophy in Education in July 1975.

h. The Department of Commerce has employed convicted Negro felons at grades

at lesta as high as GS-13.

5. The Director of Personnel, Office of the Secretary, Department of Commerce, has endorsed the position that

"We don't have to hire anyone we don't want to hire."

This position clearly is in conflict with regulations established to ensure equal employment opportunity and has been applied to deny the Plaintiff equal employment opportunity.

6. On July 29, 1974, under the provisions of 5 CFR 713.216, the Department of Commerce appointed an EEO Investigator (713.216 Investigator) to investigate the Plaintiff's complaints of racial discrimination which were filed on February 25, 1974. The 713.216 Investigator was denied access to the Plaintiff's file which ws held in the Office of Investigations and Security, Office of the Secretary, Depart-

ment of Commerce. The 713.216 Investigator, therefore, could not compare the Plaintiff's record and utilization and the records and utilization of other Caucasians with those of persons outside the Complainant's (Plaintiff's) group. The 713.216 Investigator was thereby prevented from complying the 5 CFR 713.216 in conducting the investigation.

7. The Office of Economic Opportunity has represented to the Civil Service Commission that the Plaintiff's "resignation" from said agency, effective September 6, 1972, was voluntary and ws not an adverse action; yet, the Office of Economic Opportunity has represented to the Department of Commerce that:

a. The Plaintiff was fired by the Office of Economic Opportunity for maiking false statements on an employment application;

b. The Office of Economic Opportunity saw fit to either terminate or get his (the Plaintiff's) resignation under circumstances which were at least questionable.

c. There was info re the conditions of his (the Plaintiff's) unfavorable separation from that agency (the Office of Economic Opportunity).

These actions were taken maliciously as reprisals against the Plaintiff for previous complaints of racial discrimination made by the Plaintiff against the Office of Economic Opportunity and were taken to deny the Plaintiff equal employment opportunity in the Department of Commerce's processing of the Plaintiff's applications for employment therein.

8. The Civil Service Commission stated to the Department of Commerce that the Commission was contemplating barring BREES (the Plaintiff) from Federal employment. Such

action continued a five (5) year pattern of reprisals against the Plaintiff for previous complaints of racial discrimination. The Plaintiff has never been barred from Federal employment. The Civil Service Commission abused its administrative discretion by using innuendo that the Plaintiff was "unsuitable" to influence the Department of Commerce to deny the Plaintiff employment without notification to the Plaintiff and without affording the Plaintiff the opportunity to defend against such charge.

9. Since 1969, the Civil Service Commission has taken reprisal actions to deny the Plaintiff Civil Service employment at a grade commensurate with his education and experience. The Plaintiff never withdrew applications for Civil Service Registers under Announcements Numbered 420 and 425 (or earlier versions thereof)

which he filed with the Commission in 1967, 1968, and 1969. The Commission has never returned said applications to the Plaintiff. Yet, the Commission has failed and/or refused to place the Plaintiff on Civil Service Registers for Announcements Numbered 420 and 425 in the Washington Area Office although the Plaintiff has repeatedly been found qualified for such positions in other Commission Area Offices. Throughout this period, the Civil Service Commission advised the Plaintiff that he ws eligible for employment in the Federal Service by reinstatement because of his Veterans' Preference; then, by means of inneundos of "pending unsuitability determination", as well as by withholding the Plaintiff's name from Civil Service Registers for which he was qualified, the Civil Service Commission has effectively debarred the Plaintiff from appropriate Civil

Service employment for a period of more than five (5) years, thus denying him both employment and opportunity for promotions during this period based upon his ability, education, experience, and performance, without taking required formal action for debarment under the provisions of 5 CFR PART 731 which is subject to procedural and substantive defense safeguards.

10. Even though the Civil Service Commission informed the Plaintiff in writing in April 1969 that any Government agency could hire him and the Civil Service Commission would interpose no objection, the Civil Service Commission refused to assist the Plaintiff in obtaining Civil Service employment under the Employment of the Rehabilitated Offender in the Federal Service Program because the Bureau of Personnel Investigations of the Civil Service Commission refused to place the

Plaintiff's name on Civil Service Registers in the Washington Area Office of the Commission.

11. The Department of Commerce, the Office of Economic Opportunity, and the United States Civil Service Commission used nonmerit and racially discriminatory factors and standards to judge the Plaintiffs suitabililty for Federal employment in violation of 5 CFR PARTS 300 and 713.

12. The actions of the Department of Commerce, the Office of Economic Opportunity, and the Civil Service Commission in concert denied the Plaintiff equal employment opportunity, violated his Veterans' Preference rights, and violated his rights as a citizen under the Fourteenth Amendment to the Constitution of the United States by depriving him, without due process of law, of his right to employment and income from a Civil Service position

on an equal basis and under the same criteria applied to other applicants for Federal employment.

WHEREFORE, Plaintiff prays in the alternative:

A. As to the Office of Economic Opportunity and the Civil Service Commission:

1. Promotions with the Office of Economic Opportunity (now the Community Services Administration) to

a. GS-13 effective in October 1968,

b. GS-14 effective in October 1969,

c. GS-15 effective in October 1970,

d. plus within-grade promotions as a GS-15 subsequent to Otober 1970.

2. Back pay and all other rights accruing to the promotions prayed for in paragraph 1.

3. Transfer to or conversion to a CAREER appointment with the Office of Education, effective April 14, 1974, as a GS-13, Step 10.

OR

B. As to the Department of Commerce and the Civil Service Commission:

4. Appointment to one of the following positions with the Department of Commerce for the period November 4, 1973, through April 13, 1974:

a. Computer Specialist, GS-0334-14, Step 1.

b. Computer Specialist, GS-0334-13, Step 6.

5. Back pay and all other rights accruing to the appointment prayed for in paragraph 4.

6. Transfer to or conversion to a CAREER appointment with the Office of Education, effective April 14, 1974, as a GS-13, Step 6 or Step 7.

AND

C. As to all of the foregoing agencies:

7. And for such other and further relief as to the Court may seem just and appropriate.

Tracy E. Mulligan
Attorney for Plaintiff
416 Hungerford Drive
Rockville, MD 20850
(301) 340-9670

DISTRICT OF COLUMBIA, ss:

Earl R. Brees, being first duly sworn on oath, says the foregoing is a just and true statement of the facts to the best of his information, knowledge, and belief.

Earl R. Brees, Plaintiff

Subscribed and sworn to before me this ___ day of February, 1975.

Notary Public,
District of Columbia

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CIVIL DIVISION

EARL R. BREES, 10103 Towhee Avenue Adelphia, MD 20783, Plaintiff, v. ROBERT E. HAMPTON, individually, and as Chairman of the United States Civil Service Commission, 1900 E Street, NW Washington, D.C. 20415, and ROBERT H. DRUMMOND, JR. individually, and as Director of the Bureau of Personnel Investigations, United States Civil Service Commission, 1900 E Street, NW Washington, D.C. 20415, and	*	C.A. #74-972 Complaint

ALVIN J. ARNETT, individually, and as Director of the Office of Economic Opportunity, 1200 - 19th St., NW Washington, D.C. 20506, *

Defendants. *

COMPLAINT FOR INJUNCTION AND OTHER RELIEF

Plaintiff, Earl R. Brees, by his attorney, Tracy E. Mulligan, complaining of the defendants, alleges:

1. Jurisdiction. This action arises under Section 717(c) of the Civil Rights Act of 1964, as amended on 24 March 1972. Plaintiff has exhausted his administrative remedies as shown in the decision of the Board of Appeals and Review, United States Civil Service Commission (hereafter Commission) in letter dated 8 May 1974, cover letter to Plaintiff dated 24 May 1974, copy attached, Exhibit A, with the following enclosures:

(a) Plaintiff's letter dated 5 January

1974 requesting the assignment of an EEO Counselor under the provisions of 5 CFR (Code of Federal Regulations) 713.213.

(b) Plaintiff's letter dated 11 January 1974, amending enclosure (a) above, requesting the necessary directives and the necessary forms to enable him to file a formal complaint of discrimination for actions in violation of 5 CFR PART 713 and similar directives.

(c) Commission letter dated 18 January 1974 rejecting the complaint in enclosure (a) above.

(d) Plaintiff's letter dated 4 February 1974, treated by the Commission as an appeal from the decision in enclosure (c) above, and

(e) Plaintiff's letter dated 28 January 1974, which Plaintiff considers to be his formal complaint but which was ignored by the Commission.

2. Parties. The Plaintiff is a United States citizen, an honorably discharged disabled veteran with over eleven (11) years of military service in the Armed Forces of the United States, and entitled to Veterans' Preference for employment in the Civil Service of the United States.

The Defendants are:

Robert E. Hampton, individually, and as Chairman of the United States Civil Service Commission,

Alvin J. Arnett, individually, and as Director of the Office of Economic Opportunity, and

Robert H. Drummond, Jr., individually, and as Director of the Bureau of Personnel Investigations, United States Civil Service Commission.

All of the Defendants are officials in agencies of the Executive Department of the United States Government and subject

to the laws of the United States and to the provisions of the Code of Federal Regulations (CFR).

3. Type of Proceeding. Plaintiff seeks the following relief:

(a) To set aside the Plaintiff's resignation which was effective on 6 September 1972 from a Civil Service position in the Office of Economic Opportunity on the basis that it was obtained by the Government based on racial discrimination, was voidable because entered into under duress, and was void for lack of legal consideration (copy attached, Exhibit B).

(b) For reinstatement with back pay including in-grade promotions and other promotions from October 1968 and with full transfer rights accorded to other employees of the Office of Economic Opportunity upon its pending dissolution.

(c) For damages for reprisals taken against the Plaintiff by the Commission and the Office of Economic Opportunity for complaints of racial discrimination, by abuse of discretion, by violation of the provisions of the Code of Federal Regulations and the Federal Personnel Manual, and by misuse of the administrative process

(1) to unduly or indefinitely delay decisions on Plaintiff's comlaints of racial discrimination,

(2) to unduly or indefinitely delay decisions on Plaintiff's applications for Civil Service employment,

(3) to prevent the Plaintiff from obtaining Civil Service employment from July 1971 to March 1974, and

(4) to disseminate false, derogatory, and libelous reports about the Plaintiff to hiring officials in other

agencies.

(d) For damages for racial discrimination to deny Civil Service employment to Plaintiff, and for failure and refusal to process Plaintiff's complaints of racial discrimination and to apply employment standards and regulations to the Plaintiff without racial discrimination in accordance with the requirements of the Civil Rights Act of 1964, the Code of Federal Regulations and the Federal Personnel Manual.

(e) For an order requiring the United States Civil Service Commission to show cause

(1) why the Plaintiff should not be certified as eligible for Federal employment and his name placed on Civil Service registers for positions for which he has applied and is otherwise qualified, including, but not limited to, eligibil-

ity rosters under Announcements Numbers 420 and 425,

(2) why the United States Civil Service Commission should not be required to reveal to the Court the contents of both classified and unclassified files and reports on the Plaintiff, and to delete therefrom false derogatory information prejudicing Plaintiff's Civil Service employment, and

(3) why the Civil Service Commission and its employees should not be ordered to cease and desist from using their administrative authority to take personal reprisals against the Plaintiff in denying him Federal employment in violation of his Civil Rights and his Veterans Preference rights.

4. Statement of Claim. The Plaintiff alleges:

(a) He is a United States Citizen, a

disabled veteran receiving compensation from United States and entitled to ten-point (CP) veterans preference for Civil Service employment, and an Infantry combat veteran with more than twenty (20) years of combined military and civilian Government Service; during his military career, he received five (5) Honorable Discharges, and he is a veteran of World War II and the Korean Conflict.

(b) He has received ratings as high as 108 CP out of a possible maximum of 110 on Civil Service examinations; and he has been rated for positions from GS-5 through GS-13 as an Accountant, Auditor, Systems Accountant, Computer Programmer, Computer Systems Analyst, or Computer Specialist by Commission Area Offices outside Washington, D.C., and by the Operations Support Division of the Commission in Washington, D.C., during the period October 1973

through March 1974.

(c) He was convicted of a misdemeanor, "Attempted False Pretenses," in the District of Columbia Court of General Sessions in 1967, for an offense committed while in private civilian employment. Imposition of sentence was suspended by the Court. Plaintiff has no other convictions.

(d) The Federal Government, under regulations promulgated by the United States Civil Service Commission (hereafter Commission) has adopted a policy of hiring "rehabilitated offenders". Factors to be considered and actions that an offender can take to show that he is a "rehabilitated offender" are stated in the Federal Personnel Manual, Chapter 306, Subchapter 7, extract attached, Exhibit C. These include nature and seriousness of the offense and subsequent education and

subsequent successful work history of the offender.

(e) Plaintiff's actions taken since 1967 that show he is a "rehabilitated offender" are shown on Exhibit D, attached, and include as major evidences of rehabilitation, subsequent education including a Master's degree from American University, near completion of a Doctoral degree, and a successful work history since the conviction.

I

(f) Using this misdemeanor conviction as the basis, for the past five (5) years (from March 1969 through 13 April 19740, the Defendants or their subordinate employees have systematically denied the Caucasian Plaintiff employment, and certification of eligibility for employment, in the Federal Civil Service while hiring, or approving for employment, convicted Negro

felons with far less evidence of rehabiitation, in violation of the Plaintiff's rights to Equal Employment Opportunity. This effective debarment has been accomplished by the Commission without taking formal debarment action in accordance with 5 Code of Federal Regulations 731.303. FOrmal debarment thereunder is limited to a maximum of 3 years.

(g) To accomplish this effective debarment, the Commission and its employees so abused the administrative process as to deny the Plaintiff his administrative remedies to racially discriminate against the Plaintiff and to take reprisals against him for complaints of racial discrimination by repeatedly delaying "determination of suitability for placement on Civil Service Registers" in the Washington Area Office of the Commission; by advising hiring agencies that the

Commission was "conducting an investigation to determine the Plaintiff's suitability and eligibility for Federal employment," thereby blocking Plaintiff from consideration until positions were filled by non-veterans or less-qualified applicants, or until positions were canceled; and by furnishing the hiring officials with false derogatory and libelous information about the Plaintiff; and by violating the provisions of Title 5 of the Code of Federal Regulations (CFR) designed to prevent such discrimination and reprisal, as hereafter more fully set forth.

(h) Based upon ratings attained on competitive examinations and the Plaintiff's education and experience, and with full disclosure of the aforesaid conviction on his application form, the Plaintiff, on three (3) occasions in three (3) separate offices (U.S. Department of

Commerce as a GS-13 Computer Specialist; U.S. Department of Health, Education, and Welfare as a GS-11 Management Analyst; and the Commission Bureau of Retirement and Insurance as a GS-13 Internal Auditor (Data Processing) was verbally notified by operating officials that he had been selected for employment, and then has been refused said employment by Government personnel officers based upon false derogatory information furnished by the Commission and by the Office of Economic Opportunity, or subordinate elements thereof, or by continuing delay of the Bureau of Personnel Investigations to make a determination as to whether or not the Plaintiff is suitable and eligible for Federal employment.

(i) Plaintiff has filed more than forty (40) applications for Federal employment for GS-05 through GS-13 positions in

the Washington, D.C. Area, for which he was qualified. At least five (5) of these were with the Department of Commerce in response to announced vacancies, but between October 1973 and March 1974 the Personnel Office refused to hire the Plaintiff for any of five (5) positions for which he was qualified -- GS-05 through GS-07 Secretary; GS-11/12 Computer Progammer; GS-11/12 Computer Systems Analyst; GS-12 Systems Accountant; and GS-13, Step 06, Computer Specialist -- stating that this was because they had not received a pre-employment investigation report from the Bureau of Personnel Investigations of the Commission. This investigation has been started in October 1973. In early January 1974, Mr. Mattox, a responsible official of the aforesaid Bureau of Personnel Investigations, told the Plaintiff that the investigation was

completed and the written report and the decision on his eligibility would be expedited. In June of 1974, the report is still pending.

(j) Commission employees in regions or areas of the United States (outside the Washington Area Office of the Commission), i.e., San Antonio, Texas; St. Louis, Missouri; Oklahoma City, Oklahoma, using the same uniform standards applicable to all such offices including the Washington Area Office, evaluated the Plaintiff's applications for Federal employment, which in identical form were sent to all offices, and certified the Plaintiff as eligible for Federal employment in the highest category for consideration (a compensable eligible (CP)) under Announcements Numbered 420 and 425 as an Accountant, Auditor, IRS Agent, Computer Programmer, Computer Specialist Analyst, and

Computer Specialist. The Plaintiff's examination scores placed him at or clsoe to the top of this category with ratings as high as 108CP out of a possible 110 points. The Washington Area Office of the Commission has refused to accept transfer of eligibility under Announcement Number 425 since January 1974.

(k) In Washington, D.C., on 25 October 1973, the Plaintiff was placed on a Civil Service Register under Announcement Number 408 for Senior Level Positions (as applicant number 192685). This application was not processed by the Washington Area Office. The Washington Area Office processes applications for positions at grades GS-12 and below only. The Plaintiff's applications for the Senior Level Positions were reviewed and approved by the Operations Support Division of the Bureau of Recruiting and Examining of the Commis-

sion in Washington, D.C. Plaintiff was further placed on "CERTIFICATES" showing that he was at or near the top of the Register and eligible for employment in the Civil Service as an Auditor, GS-13, and as a Systems Accountant, GS-13; he was also referred to another Federal agency by the Commission for a position as a Computer Specialist or Computer Systems Analyst, GS-13. The Plaintiff ws hired as a result of a "CERTIFICATE" from the Civil Service Register for Announcement Number 408 as a GS-13 Systems Accountant (GS-0510-13) by the Office of Education, Department of Health, Education, and Welfare effective 14 April 1974. However, an adverse decision on the above described investigation still pending in the Bureau of Personnel Investigations could again cause Plaintiff's removal.

(1) It should be particularly noted

that a major part of this action is based on Plaintiff's complaint of racial discrimination and reprisal carried out by the Commission particularly including its Bureau of Personnel Investigations and the Washington Area Office of the Commission (as well as by the Office of Economic Opportunity) against the Plaintiff for more than five (5) years). A chronology of Plaintiff's employment with the Office of Economic Opportunity and the subsequent actions taken against him, are grouped as follows in succeeding paragraphs.

> 27 August 1967 through 3 August 1968, Plaintiff's first employment and first firing by the Office of Economic Opportunity. (par. m below)
>
> 4 August 1968 through 3 February 1969, Plaintiff's appeals and Commission order for reinstatement. (par. n below)

4 February 1969 through 7 March 1969, token reinstatement and second firing by the Office of Economic Opportunity. (par. o below)

8 March 1969 through 6 July 1971, Plaintiff's appeals of the second firing. (par. p. below).

The Taylor Memorandum of 7 July 1971, signed by Stanley N. Taylor, Chief, Division of Adjudication and Appraisal, Bureau of Personnel Investigations, United States Civil Service Commission and endorsed by the Director of the Bureau of Personnel Investigations to Mr. Frazier (Director, Federal Equal Employment Opportunity Program of the Civil Service Commission) who was the highest Civil Service Commission official responsible for the proper investigation of the Plaintiff's complaints of racial discrimination and reprisals carried out by the Office of Economic Opportunity. (par. q below)

6 August 1971, Plaintiff's "reinstatement" and coerced resignation. (par. r below)

7 August 1971 through 6 September 1972, appeals within the Office of Econo-

mic Opportunity and complaints of racial discrimination and reprisals which were not processed as required by the Code of Federal Regulations. (par. s below)

7 September 1972 until the Present. (Discussed in Section I above.)

II

(m) - 27 August 1967 thruogh 3 August 1968. The Plaintiff transferred from a GS-09 position in the Bureau of Land Management to the Office of Economic Opportunity, hereinafter called the Agency, with a promotion to Systems Accounant, GS-11.

(1) On 22 October 1967, the Plaintiff was promoted by the Agency to Systems Accountant, GS-12, for "outstanding" work.

(2) In April 1968, the Plaintiff's supervisor prepared a special position description to promote the Plain-

tiff to Systems Accountant, GS-13, for "outstanding" work.

(3) In May 1968, the Plaintiff was recommended for a Quality Increase in Compensation for "outstanding" work.

(4) On 27 June 1968, Plaintiff was given a notice of proposed removal by the Agency, charged with "falsifying an appointment document".

(5) On 3 August 1968, Plaintiff was discharged by the Agency.

(6) Between notification on 27 June 1968 and discharge on 3 August 1968, the Plaintiff complained of racial discrimination to the Civil Rights Compliance Officer and the Deputy Director of the Office of Civil Rights of the Agency. The Civil Rights Compliance Officer of the Agency testified at the November-December 1969 Hearing of the Plaintiff within the Agency that his office attempted to stop

the firing of the Plaintiff. (A 1971 memorandum by Wilfred Leland, the aforesaid Civil Rights Compliance Officer, stated that the Plaintiff had submitted a complaint in July 1968 but that his memorandum of record could not be found.)

(n) 4 August 1969 through 3 February 1969. This discharge was appealed to the Commission under the provisions of 5 CFR PART 752. The Appeals Examining Office, which handled the appeal, found that the charge was totally unfounded and in January 1969 ordered the Agency to restore the Plaintiff to duty.

(l) Upon receipt of this Commission decision and without appealing therefrom, the Agency instructed the Plaintiff to come to the Agency for a meeting. Present were Mr. Howe, Director of Personnel for the Agency; the Plaintiff; and Mr. Campbell and Mr. Vela, representatives of

the American Federation of Government Employees Union.

(2) At this meeting, Mr. Howe stated that management had only two choices, "If Mr. Brees (Plaintiff) insists on coming back to work, he will be fired immediately. Or he can resign and he will be given a clean Standard Form 50. And we will put any reason he wants for resigning." (The Plaintiff contends that at this point the coercion to force his resignation started.)

(o) 4 February 1969 through 7 March 1969. The Plaintiff refused to resign and returned to work on 4 February 1969 at the Agency. On the same day, Mr. Brees (Plaintiff) received his second eltter of proposed removal signed by Mr. Cassidy, Assistant Director of OEO, predated 31 January 1969. The basis stated therein ws "fraud and deception" and "criminal con-

duct".

(1) On any proposed removal, Civil Service employees are required to be given 30 days' notice.

(2) On 7 March 1969, Plaintiff was fired for the second time by the Agency. Durinkg that 30-day period, rather than being restored to duty, the Plaintiff was given a desk in a storeroom and no assignments, although he begged the supervisors for work.

Title 5 of the Code of Federal Regulations (hereinafter 5 CFR), Section 772.306, Decision on Initial Appeal, provides as follows:

> "(a) The office of the Commission having initial jurisdiction of the appeal, after making such investigation as it considers necessary, shall issue a written decision and send copies thereof to the appellant, his representative, and the agency. The decision on each appeal covered by this

part shall contain findings, recommendations for any corrective action required, and notification of the right of either party to appeal to the Board of Appeals and Review. In addition, the decision on each appeal under Subpart H, Part 315, and Subparts B and C of Part 752, Part 754 of this chapter, and subpart L of Part 831 of this chapter, shall include an analysis of the findings and a statement of the reasons for the conclusions reached. Except as provided in paragraph (b) of this section, the agency shall report, within 7 calendar days after receipt of the decision, that it has carried the decision into effect or that it is appealing the decision to the Board."

"(b) When an employee makes a timely appeal to the Board of Appeals and Review under §772.307 from a decision of the Appeals Examining Office affirming an adverse decision of the agency under Part 754 of this chapter or when an employee or agency makes a timely appeal under §772.307 from a decision of the Appeals Examining Office or regional office affirming or reversing an adverse decision of the Bureau of Retire-

> ment and Insurance under Subpart L of Part 831 of this chapter, that decision may not be given effect until the Board of Appeals and Review has adjudicated the appeal."

The above cited provisions of the Code of Federal Regulations were not complied with by the Agency.

(p) 8 March 1969 through 6 July 1971. In March 1969, the Plaintiff appealed the second firing within the Agency under the provisions of 5 CFT PART 752 and PART 771. A hearing as held eight (8) months later in November 1969 (see below).

(l) On 15 November 1969, the Plaintiff filed a second complaint of racial discrimination with the Office of the Director of the Agency under the provisions of 5 CFR PART 713. The com-

plaint was ignored by the Agency, and no action was taken until later ordered by the Commission.

(2) In late November 1969, a hearing on the Plaintiff's appeal was held at the Office of Economic Opportunity. The Hearing Committee, appointed under the provisions of 5 CFR PART 771 was composed of a retired General, a retired Colonel (an attorney), and the OEO Mid-Atlantic Regional Counsel (an attorney). The hearing lasted five (5) days. Both sides submitted briefs to the Hearing Committee. The recommendation of the Hearing Committee was unanimous that the Plaintiff be reinstated from the second firing. The Report of the Hearing Committee, dated 6 March 1970, stated, inter alia, that the Agency's action in effectuating the second (7 March 1969) discharge was "not taken in good faith", that rather than reinstate

the appellant and try to live with the situation, OEO made the decision to terminate him (Plaintiff) again come what may * * * that the mind of the agency was closed and his discharge predetermined. The following extracts are quoted from the report:

> "In this case, Mr. Brees (Plaintiff) was clearly a superior worker. This was admitted by agency witnesses who supervised him."
>
> "The agency, for its part, determined that appellant would never again work for OEO."
>
> "We find that the agency's action in effectuating the second discharge (7 March 1969) was not taken in good faith. Rather than reinstate appellant and try to live with the situation, OEO made the decision to terminate him again, come what may."
>
> "The testimony of Mr. Brees (Plaintiff) and Mr. Cassidy (removing official) convinces us that no matter what facts or arguments he

presented in his own behalf, the mind of the agency was closed and his discharge predetermined."

(Note: 5 CFR 752.202(b) and the Veterans" Preference Act required that:

" If the employee answers, the agency shall consider his answer in reaching its decision.")

"We find that the underlying cause for the second discharge ws the agency's hostility to Mr. Brees (Plaintiff) which had built up since the first discharge and which he had exacerbated by his victory at the Civil Service Commission. We find that the agency rationalized its predetermined decision not to reinstate appellant (Plaintiff) by setting forth the two reasons already discussed."

"* * * the testimony was uncontradicted that Mr. Brees (Plaintiff) was an outstanding employee. On October 22, 1967, he ws promoted to GS-12. In addition, he was recommended for a quality increase.

> During this time he was assigned primarily to head up a task force composed of employees from various branches of OEO, some of whom had higher grades than he did."
>
> "He was given no opportunity to work at any job, including one not concerned with finances."
>
> "The problem is particularly aggravated in this case because the failure to elicit the full information on appellant's criminal involvement is entirely the fault of the agency."

Copy of the Report of the Hearing Committee, Exhibit E, is attached.

(3) The Hearing Committee submitted its recommendations to the appellate official, nominally the Director of the Agency, but delegated to the Deputy Director, Wesley Hjornevik. While his decision was pending, the Office of General Counsel of the Agency submitted a brief to the appellate official. The Plaintiff's attorney asked Mr. Briley, Assistant

General Counsel for the Agency, for permission to do the same -- to file an appellate brief. Mr. Briley denied the Plaintiff's counsel the opportunity to submit a brief.

(4) On 31 March 1970, Mr. Hjornevik issued the appellate decision (Exhibit F). He cleared the Plaintiff of charges of fraud and deception, but found that the Plaintiff should remain fired for the criminal conduct charge (a misdemeanor while in private employment).

(5) In April 1970, the Plaintiff appealed to the Civil Service Commission under the provisions of 5 CFR PARTS 752, 771, and 772.

(6) In August 1970, the Appeals Examining Office of the Commission remanded the case to the Agency because the Agency had violated 5 CFT PARTS 713 and 771.

(7) Under 5 CFR PART 772, the Agency had fifteen (15) days in which to appeal to the Board of Appeals and Review. The Agency appealed more than thirty (30) days later. The appeal was accepted by the Board of Appeals and Review.

(8) In January 1971, the Board of Appeals and Review remanded the case a second time, affirming the decision of the Appeals Examining Office.

(9) In February 1971, the Agency started to process the Plaintiff's complaint of racial discrimination filed 15 November 1969 -- fifteen (15) months before.

> 5 CFR PART 713 at that time provided that a complaint of racial discrimination should be processed within sixty (60) days.

(10) In April 1971, an EEO Counselor was appointed, Mr. Wilmer S. Hunt. Mr. Hunt's EEO report, filed 11 June 1971

said, inter alia:

> While discrimination because of race may not be supported with the required facts (because the agency refuses to make available the serious criminal records of Negro felons in order to compare the treatment of Negro felons with the treatment of the Appellant -- a Caucasian misdemeanant), the sequence of events point quite strongly to the possibility of discrimination in the form of reprisals against Mr. Brees because he filed a complaint of discrimination. This possibility crystalizes itself more and more when one considers why OEO was so apparently determined to fire Mr. Brees rather than choose a less harsh, but equally effective remedy * * *."
>
> "* * * it is difficult to understand why OEO would be unwilling to simply transfer Mr. Brees to a position unrelated to finance."
>
> Attachment I reflects Mr. Brees' evidence of rehabilitation which, in anybody's book, is impressive. This display also raises the question of why Mr. Brees had to be fired rather than

transferred. Attachment J further emphasizes Mr. Brees' ability to perform elsewhere within the Agency."

"All these attachment(s) and other enumerations are made to show that there is cause to believe that the second firing of Mr. Brees has the 'smell' of reprisal because he charged discrimination for the first firing * * *."

"Nowhere in all the documents filed by OEO is there any attempt to explain why Mr. Brees could not have been transferred to a different post of duty, and it is this point that makes the Counselor suspect Agency reprisals against Mr. Brees."

"This report is filed late only because verbal agreements with the Human Rights Director resulted in the undersigned's understanding that a report might not have to be written since a probable settlement was imminent during the Counselor phase."

(11) In June 1971, the Agency appointed an EEO Investigator under 5 CFR 713.216. This "investigator" was a subordinate of one of the Respondents against

whom the Plaintiff's complaint had been made. This violated the provisions of 5 CFR 713.216. Plaintiff protested to the Commission, and the investigator was removed.

(12) In June 1971, the Agency requested that the Commission take over the case on a reimbursable basis. The investigation was transferred to the Office of the Director, Federal Equal Employment Opportunity Program, United States Civil Service Commission. The Director was Mr. James Frazier, Jr.

(13) Mr. James Frazier, Jr., asked the Bureau of Personnel Investigations to investigate the case, and the investigation was referred to the Chief, Division of Adjudication and Appraisal, Mr. Stanley N. Taylor.

(In March 1969, the Plaintiff had filed a complaint of racial discrimination

against the said Stanley N. Taylor. The complaint was ignored by the Commission and not processed.)

(q) The Taylor Memorandum of 7 July 1971. The response of Mr. Stanley N. Taylor, Chief, Division of Adjudication and Appraisal, to his superior, Kimbell Johnson, Director, Bureau of Personnel Investigations, was contained in a Memorandum, dated 7 July 1971, subject: "Request for Investigation of Discrimination Complaint by Mr. Earl R. brees". This was forwarded by Kimbell Johnson to Mr. James Frazier, Jr., Director, Federal Equal Employment Opportunity Program, United States Civil Service Commission. A copy of this Memorandum is attached, Exhibit G, and incorporated herein by refernce thereto. This Memorandum contains:

(1) False information, labeling the Plaintiff as having been convicted in

the United States District Court for the District of Columbia of false pretense. At the time (1967) of this alleged conviction, the United States District Court for the District of Columbia had exclusive felony jurisdiction in the District of Columbia. The Plaintiff has never been a defendant in said Court and has never been convicted of a felony.

(2) False information, labeling the Plaintiff as utterly unscrupulous and a falsifier of documents.

(3) False information, labeling the Plaintiff as having "adjusted the filing dates of his several applications to make it appear that he filed before he was formally convicted of false pretense".

(4) False information, labeling the Plaintiff as having "perverted" the appeals system of the Federal Government.

(5) False information to the

effect that "it is absolutely asinine to state that Brees (the Plaintiff) had been 'cleared' by anyone" when the Plaintiff had been "cleared" in the administrative process by the Deputy Director of the Agency of all wrongdoing as a Federal employee and that at the time this memorandum was written the Plaintiff stood accused of no wrongdoing as a Federal employee.

(6) By innuendo, anyone dealing with Mr. Brees is told to expect abuse and harassment from him.

The Plaintiff alleges that this Memorandum or its false derogatory contents have been circulated within the Commission, to the EEO Investigator, Mr. Anderson, appointed on or about 20 July 1971, to investigate the Plaintiff's November 1969 complaint of racial discrimination, and to hiring agencies to block

proper investigation of Plaintiff's charges Anderson, appointed on or about 20 July 1971, to investigate the Plaintiff's November 1969 complaint of racial discrimination, and to hiring agencies to block proper investigation of Plaintiff's charges of racial discrimination, to effectively debar the Plaintiff from employment in the Federal Civil Service and from examination for Federal employment as a reprisal for the Plaintiff's bringing charges of racial discrimination and reprisals.

(r) 6 August 1971 "Reinstatement" and Plaintiff's Coerced Resignation.

(1) Plaintiff's second firing (7 March 1969) by the Agency had been found by the Hearing Committee (supra, paragraph p) to have been improper as to the merits, although their recommendations were ignored by the Agency. It had been remanded twice

after that by the Civil Service Commission because it had been accomplished in violation of the procedural safeguards for Civil Service employees contained in the Code of Federal Regulations. Plaintiff had not been legally discharged.

(2) In a meeting on or about 22 July 1971, the Plaintiff, a Caucasian, had been refused reinstatement and restoration to duty by Ernest Russell, a Black official who was the Associate Director for Administration for the Office of Economic Opportunity. At that meeting, before agreeing to resignation as the price of reinstatement with back pay, Plaintiff had been told by Mr. Trachtenberg, Office of General Counsel, Office of Economic Opportunity, that:

> If you do not agree to this, you will get nothing. We do not have to do anything. We won't answer the investigator's questions and we will answer none of your questions.

The Agency had demonstrated fully its power to not answer the questions and the letters of the Plaintiff, and the Civil Service Commission also refused to answer similar letters. Throughout the efforts of the Plaintiff to fight his removal from the Agency, the Agency and the Civil Service Commission repeatedly refused to respond to his questions concerning the charges against him, questions concerning statistics for Black convicted members of the Agency and statistics on the treatment of Caucasian and Black members of the Agency who had been convicted of offenses against the law.

(3) The ivnestigation of the Plaintiff's November 1969 complaint of racial discrimination had been delayed to July 1971, and then prejudiced by the Taylor Memorandum of 7 July 1971, supra,

that had been given to the highest Equal Employment Opportunity Officer in the Civil Service Commission and forwarded to the 713.216 Investigator before "investigation" started. The investigation was never completed.

(4) The Plaintiff first saw the aforesaid Taylor Memorandum near the end of July 1971. Plaintiff lost all hope of any subsequent objective decision by the Commission. The power of the Bureau of Personnel Investigations to affect Civil Service careers is self-evident to every Government employee. Any "investigator" selected from within the Civil Service, with the Taylor Memorandum in his hand, would be understandably reluctant to defy them in his report; and the futility of the Hearing Committee Report of March 1970 suggests such report would be useless in any case.

(5) The Taylor Memorandum of 7 July 1971 merely suggested that "it would e cheaper for OEO to pay Mr. Brees his regular salary to stay home". Within a month, OEO had reinstated the Plaintiff with back pay in exchange for his "resignation".

(6) The Plaintiff had been denied employment for nearly two and one-half years and was in desperate financial straits.

(7) The Resignation Agreement (Exhibit B) was drafted and typed in the Office of the General Counsel of the Agency. Prior to signing it, Plaintiff had sent letters to the Civil Service Commission and to the Director of the Agency, complaining that he was being coerced into signing it. No answer has been received to either letter even though said letters were in the files of both

agencies prior to the time the Agreement was signed. Both the Government and the Plaintiff knew, when the Agreement was signed by both, that its contents were not true.

(8) Paintiff further alleges that the contract is void as without consideration from the Government. Plaintiff alleges that he had been illegally removed from his position, on the merits of the matter; that there were disqualifying procedural defects in said removal; that he had been racially discriminated against in the application of standards to judge "rehabilitated" offenders; that his right to prompt and proper investigation of his complaint thereof, made in November 1969, violated and denied; that his second discharge was accomplished in violation of the safeguards provided to employees by law and by Title 5, CFR, as shown by the

discharge action being remanded by the Civil Service Commission to the Agency; that the Commission Reinstatement Order after the first firing had not been complied with in good faith as required by 5 CFR, and is still valid; and that therefore Plaintiff's second firing in March of 1969 was illegal and void; that Plaintiff was already entitled to the full amount of back pay offered as consideration in the Agreement dated 6 August 1971 (Exhibit B). Therefore, the back pay was no new consideration. The granting of pay for accrued annual and sick leave was also payment of a prior debt, and no new legal consideration.

(9) The legal effect of the reinstatement of any employee as provided in 5 CFR is given in 5 CFR 550.803 and 550.804.

(a) 550.803(a). "The require-

ment for an administrative determination referred to in the phrase 'on the basis of an administrative determination or a timely appeal' in section 5596 of title 5, United States Code, is met when an appropriate authority in an agency makes a decision on its own initiative in a case involving an unjustified or unwarranted personnel action. The decision may be oral but shall be confirmed in writing." (underlining added)

(b) 550.803(d). "To be unjustified or unwarranted, a personnel action must be determined to be improper or errorneous on the basis of either substantive or procedural defects after consideration of the equitable, legal, and procedural elements involved in the personnel action."

(c) 550.804(e). "When an appropriate authority corrects an unjusti-

fied or unwarranted personnel action, the agency shall recompute for the period covered by the corrective action the pay, allowances, differentials, and leave account (limiting the accumulation to the maximum prescribed by law or regulation for the employee) of the employee as if the unjustified or unwarranted personnel action had not occurred and the employee shall be deemed for all purposes to have rendered service in the agency for the period covered by the corrective action.

* * *"

The Plaintiff alleges that reinstatement could have been made only if the second firing had been determined to be unjustified or unwarranted and that therefore there was no consideration in the agreement for Plaintiff's resignation, on this basis as well as those stated above.

(s) 7 August 1971 to 6 September 1972. This period covered the time that Plaintiff was carried as a Civil Service employee with pay until annual and sick leave were exhausted or no longer granted (November 1971) and thereafter to 6 September 1972 in a leave without pay status, under the aforesaid Agreement.

(1) During this period, Plaintiff repeatedly requested that his resignation be withdrawn. Although, as drafted by the Office of General counsel of the Office of Economic Opportunity it provided on its face that it was "irrevocable", such a provision is in conflict with 5 CFR 715.202(b), which states:

> "Withdrawal of resignation. Except as provided in this paragraph, a resignation is binding on an employee once he has submitted it. An agency, in its discretion, may permit the employee to withdraw his resignation at any time before it has

> become effective. An agency may decline a request to withdraw a resignation before it has become effective only when it has a valid reason and explains that reason to the employee. A valid reason includes, but is not limited to, administrative disruption or the hiring or commitment to hire a replacement. Avoidance of adverse action proceedings is not a valid reason." (33 F.R. 12482, Sept. 4, 1968, as amended at 36 F.R. 9765, May 28, 1971)

Plaintiff alleges that the stated reasons given by the Office of Economic Opportunity for refusing to accept his withdrawal of the resignation were not made in good faith, and the real reason was either to avoid processing an adverse action against the Plaintiff in the face of numerous still pending and unprocessed racial discrimination complaints, or to avoid good faith compliance with the first Commission Order for Reinstatement.

(2) Even after the Agreement was signed, during the annual leave period and the leave without pay period, Plaintiff sought to return to work at the Agency and was refused permission to return to work by Ernest Russell, Association Direction for Administration of the Agency, even though the Plaintiff's supervisor was willing to accept him back on duty.

(t) The Plaintiff alleges and verily believes that Government officials have been denying the Plaintiff his rights to employment as a disabled veteran because of a "secret" report prepared and circulated by the Civil Service Commission. Page 806 of the Transcript of the Plaintiff's Hearing held in the Office of Economic Opportunity in November-December 1969 reflects:

> "GENERAL O'FLYNN: You just mentioned that you showed the file to Mr. Cassidy

(the removing official). Was this the file containing the information furnished you by the Civil Service Commission?

THE WITNESS: Yes, sir.

GENERAL O'FLYNN: Or your own file?

THE WITNESS: The Civil Service Commission file."

The Plaintiff has never been confronted with the contents of this file, even though said file has been used in deciding on his discharge from the Agency and to impede his employment with the Government.

III

(u) The Plaintiff is unable to accept or to follow the reasoning stated in the decision of the Board of Appeals and Review in the letter dated 8 May 1974, attached as Exhibit A. It appears to be based on narrowly legalistic reasoning, totally at variance with the broad intent

of the Congress to stop racial discrimination, and the strong affirmations contained in 5 CFR and the Federal Personnel Manual that the Commission intends to carry out that intent.

(1) Plaintiff challenges the statement on page 1, repeated on page 3, that no proper basis exists on which the Agency could have accepted your complaints for processing because "no selection had been made, and no evidence in the record that a final decision to reject has been made". The fact that the Plaintiff had been selected by the operating official and then, contrary to what was intended, for the Commission to require or allow the personnel office to delay filling the position to prevent putting the Plaintiff on the payroll, would itself be discrimination or reprisal. One of the Plaintiff's allegations of discrimination is that

exactly that abuse of administrative process and discretion has been used to discriminate or take reprisal against him for his previous discrimination complaints in other hiring actions. And certainly the Plaintiff can not be expected to put in the record the secret determination of the Commission or its employees as to whether or not a final decision to reject has been made. The decision of the Board of Appeals and Review does not deny that such decision has been or would be made.

(2) The statement on page 2 of the letter is loaded with "negative pregnant".

> "The Board notes that your allegations of discrimination and reprisal in connection with the Commission's failure to find you suitable for employment in the competitive Federal service concern your application for employment with Federal agencies in general, rather that with one Civil Service

> Commission; for this reason, the Board finds that those allegations may not be accepted for processing under part 713 of the Civil Service regulations. In addition, your allegations of discrimination and reprisal on the part of officials of the Office of Economic Opportunity clearly could not be accepted for processing by the Commission's Director of Equal Employment Opportunity or by any office, with the possible exception of the Office of Economic Opportunity."

If not under Part 713, then what paragraph or section in 5 CFR would lead the Commission to respond? What information is being withheld?

Logical questions arise:

> Must the Plaintiff submit an identical complaint except for changing a three-digit part number in the CFR or substituting some other designator, which the Commission has kept secret from the Plaintiff?
>
> Or are the Commission and its employees beyond the Civil Rights Law and immune to complaints and suit?

(3) The Plaintiff further challenges the decision of the Board of Appeals and Review that Part 713 is not applicable. The decision states on page 2:

> "Part 713 of the Civil Service regulations, under which this complaint was filed, covers complaints filed by employees or applicants for employment who believe they have been discriminated against, on the basis of race, color, religion, sex, or national origin, by the agency with whom the complaint is filed, or by employees or applicants who believe they have been the victims of reprisal on the part of that agency for filing previous discrimination complaints."

Item by item:

Plaintiff is an applicant for employment; who believes he has been discriminated against; on the basis of race; by the Agency (the Commission); with whom the complaint is filed (the Commission)

and

Plaintiff is an applicant; who believes he has been a victim of reprisal; on the part of that Agency (the Commission); for filing previous discrimination complaints.

5 CFR PART 713 would appear to fit, precisely.

(4) The Plaintiff challenges the next statement on page 2 of the decision of the Board of Appeals and Review dated 8 May 1974 (Exhibit A):

> "Because you are not an employee of the Civil Service Commission, the only allegations of discrimination or reprisal which might properly be accepted for processing by the Commission's Director of Equal Employment Opportunity would be allegations related to your application for employment with the Civil Service Commission".

Why? On what basis? On what authority is that statement made?

(5) The Plaintiff respectfully alleges that the superficial and at best narrowly technical decision of the Board of Appeals and Review, with its strained tortuous reasoning, replete with the negative pregnant and seeming non-sequiturs, is its own evidence that Plaintiff's complaints of racial discrimination and reprisal are summarily rejected or are ignored and treated with contempt by the Commission, and that no administrative remedy exists to determine their merits.

WHEREFORE, Plaintiff prays:

1. That Plaintiff's resignation from the Office of Economic Opportunity be set aside and Plaintiff awarded judgment for back pay, with both in-grade and grade level promotions that he would have had from October 1968 to the present, less offsets for wages or pay received during that period.

2. That Plaintiff's pay on his present GS-13 position be increased to the particular in-grade step that would most nearly match the pay he would be receiving with the reinstatement and promotions prayed in Prayer 1, above.

3. That the Office of Economic Opportunity and the Civil Service Commission be enjoined to accord him transfer rights identical to those accorded to employees of the Office of Economic Opportunity, now in the process of dissolution.

4. In the alternative, for damages equal to the amount determined under the computation in Prayer 1, above, from the Office of Economic Opportunity, the Civil Service Commission, and other Defendants for racial discrimination during the period August 1968 to the present.

5. In the alternative, for damages equal to the amount determined under the

computation in Prayer 1, above, from the Office of Economic Opportunity, the Civil Service Commission, and other Defendants for reprisals taken against him for filing complaints of racial discrimination, denying him Civil Service employment and opportunity to apply for Civil Service employment.

6. In the alternative, for damages equal to the amount determined under the computation in Prayer 1, above, for violation of the Plaintiff's Veterans' Preference rights to Civil Service employment by denying application for and certification from Civil Service Registers.

7. In the alternative, for damages equal to the amount determined under the computation in Prayer 1, above, for circulating false, derogatory reports about the Plaintiff to hiring agencies and impeding or blocking his employment in the Civil

Service.

8. For an Order to the United States Civil Service Commission to show cause why an injunction should not issue enjoining the Commission:

(a) From taking or permitting any adverse action against Plaintiff until this cause has been heard and decided.

(b) To certify the Plaintiff as suitable and eligible for Civil Service employment and to place his name on Civil Service Registers for positions for which he has or may apply and for which he is otherwise qualified.

(c) To reveal to the Court the contents of both classified and unclassified files and reports on the Plaintiff, and to delete therefrom false, derogatory information prejudicing the Plaintiff's Civil Service employment.

(d) To refrain from, and to

restrain its employees from using their administrative authority to take personal reprisals against the Plaintiff to obstruct or deny him Federal employment in violation of his Civil Rights and Veterans' Preference rights.

9. And for such other and further relief as to the Court may seem just and appropriate.

Respectfully submitted,

Tracy E. Mulligan
Attorney for Plaintiff
416 Hungerford Drive
Rockville, MD 20850
(301) 340-9670

DISTRICT OF COLUMBIA, ss:

Earl R. Brees, being first duly sworn on oath says the foregoing is a just and true statement of the facts, to the best of his information, knowledge, and belief.

/s/
Earl R. Brees, Plaintiff

Subscribed and sworn to before me this 27th day of June, 1974.

/s/

Notary Public, D.C.